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NOTES OF THE WEEK

Emergency Regulations

The Defence Regulations have been gradually disappearing, and it is a matter for regret that a situation has arisen in which it is necessary that there should be some fresh Emergency Regulations. It has been emphasized that the primary object is not to impose fresh restrictions, but rather to relax some of those that might stand in the way of the best use of manpower and services during the continuance of the emergency. Restrictions may have to be imposed later on in the general interest, and if so they will be accepted by the general public without murmuring, in the realization that the conservation of supplies and the economical use of services are for the common good.

It is necessary to turn to the Emergency Powers Act, 1920, for the powers and procedure in relation to the making of such regulations. These are briefly and adequately dealt with in *Stone*, p. 789. The new regulations, which came into force on June 1, deal with a number of matters, including the extended use of goods vehicles, the use of vehicles as passenger vehicles without the usual licences, the employment of persons as drivers and conductors, the relaxation of some of the formalities connected with third party insurance, the limitation on postal packets, the supply of gas and electricity, the control and distribution of petrol and oil, the control and distribution of food and animal feeding stuffs.

For carrying out the purposes of these regulations it is provided that Ministers may make the necessary regulations. The present regulations do not in themselves do more than confer the necessary authority upon the Ministers, except that certain provisions relate to the preservation of public order and the offence of sabotage. It is to be hoped that these last named regulations will not need to be enforced. Feelings sometimes run high at times like the present, especially when a strike is prolonged and the public suffers inconvenience and loss. If people generally try to be good-tempered with one another and to put up with inconvenience in such a way as to facilitate the measures found necessary by the Government, the life of the community can and will be carried on successfully. In the meantime that tried and trusted elder statesman, Lord Samuel, has pointed the way out of the present situation. The sooner it is followed the better for everybody.

Protecting the Accused

The Times of May 25 reported Hilbery, J., as saying, in the Court of Criminal Appeal: " We strain everything in our courts far too far in the favour of the accused."

Taking an observation out of its context often fails to give it its true significance, but whatever the context, such an observation from a High Court Judge of long experience gives rise to the question whether perhaps our measures to protect the innocent from conviction may sometimes be carried too far.

In 1945, Sir Carleton Allen wrote in the *Oxford Magazine* that there is little danger nowadays of conviction of the innocent, but there is no small danger of the artificial innocence of the guilty. He had referred to " the constant complication of technicalities which make it difficult to obtain convictions even in the clearest cases."

We take pride in the fact that under our system of criminal law it is almost impossible for an innocent man to be convicted, and that if he should be convicted our extensive provision for appeals will almost certainly correct an injustice. We never tire of saying that it is better that 10 guilty men should be acquitted than that one innocent should be convicted. That is all well enough, but at times it must seem to foreign students of our methods that we rather boast of the acquittals of the guilty as evidence of the wisdom and humanity of our system, and of the good sense of our juries and magistrates. Indeed it is a tragic mistake when an innocent man is convicted, and it is to be avoided by the employment of every possible and reasonable safeguard. It is also true, however, that the escape of a guilty man, though less tragic, is also a defeat for justice and against the public interest. It is for the public good that the guilty should be convicted, not that they should escape. The oft-quoted principle about the 10

and the one can be overdone, without due reflexion about its application. The question arises, are we going too far in the protection of accused persons?

The accused is rightly protected from third degree methods, from being trapped into admissions by improper means, and from conviction on tainted evidence uncorroborated by anyone else and denied by him. It is quite easy to see the soundness of many of the rules of practice, as well as of law, which protect him from being found guilty upon insufficient proof. The real question is whether, as some people think, this excellent system of safeguards is not carried to excess, so that quite a substantial number of accused persons are acquitted when a jury or a bench of magistrates could have convicted confidently and correctly if they had not been circumscribed in their inquiry by the strict application of rules which unnecessarily cramp the prosecution and favour the accused. One point of criticism, to name only one for an example, is the requirement that an accused who wishes to make a statement to the police should be cautioned. The critics argue that if a man is guilty it is in the interests of justice that he should not be deterred from saying so, and that all that is necessary is to insure that he is not subjected to pressure when he shows no desire to talk. If he is cautioned, it may occur to him for the first time that although he is guilty he may perhaps be able to persuade a jury or a magistrates' court that he is not guilty, and so escape what he knows to be a just punishment.

We have done no more than suggest that the dictum of a learned Judge deserves to be the subject of discussion and examination. It is not likely that relaxation of the rules designed to protect accused persons would be readily accepted. It might, none the less, be a matter for serious debate.

Young Offender. Imprisonment for Driving while Disqualified

At 119 J.P.N. 339 (P.P. 6), we answered a question about the appropriate way of dealing with an offender under 21 who is convicted of driving while disqualified. It will be remembered that s. 7 (4) of the Road Traffic Act, 1930, enacts that a person who is convicted of that offence is liable to imprisonment unless the court, having regard to the special circumstances of the case, thinks that a fine would be an adequate punishment.

On the other hand by s. 17 (2) of the Criminal Justice Act, 1948, no court shall impose imprisonment on a person under 21 years of age unless it is of opinion that no other method of dealing with him is appropriate.

We said in answer to the practical point referred to above that the apparent conflict between these two provisions could be resolved with certainty only by a decision of the High Court, and our attention has now been called to the case of *Davidson-Houston* v. *Lanning*, reported at (1955) *Crim. Law Review*, p. 311. In this case a youth of 20 pleaded guilty to taking and driving away a car without consent, to using the car without the necessary insurance policy being in force and to driving whilst disqualified. He had previous convictions for motoring offences, and he was fined on the first charge and sent to prison for one month and three months, respectively, on the second and third, the sentences to run concurrently.

It was contended on his behalf that s. 17 (2) of the 1948 Act superseded, in the case of a person under 21 years of age, the provision of s. 7 (4) of the 1930 Act which requires imprisonment to be imposed unless special reasons are found.

The report of the case states that it was held, dismissing the appeal, that s. 17 (2) of the 1948 Act did not supersede s. 7 (4) of the 1930 Act, and that in the circumstances there was no other course open to the justices but to send the appellant to prison.

We shall be interested to see whether any fuller report of this case appears, giving the judgments, but in the meantime our readers will like to note that the question has been considered and decided by the High Court. The decision appears to support in the main the opinion we ventured to express in the practical point referred to. Whether the judgments will show that more weight should be attached to the one section rather than to the other we are not able at this stage to say.

Block Loan Sanctions

Before the war a system of composite loan sanctions obtained in respect of smallholdings loans. This simply meant that although individual proposals were approved by the Ministry of Agriculture and Fisheries, the Ministry of Health issued about twice a year two sanctions to borrow, one for land acquisition of 80 years and the other for an equated period in respect of works. There was a consequent economy in administration because individual smallholdings loans were quite small in amount.

This practice has been re-introduced and in addition a new procedure has been agreed whereby block loan sanctions can be obtained for services controlled by the Home Office, Ministry of Health and Ministry of Education. Of these the most important is the last and our readers may therefore be interested in the procedure agreed by that Ministry with a local education authority:

1. The Council submits to the Ministry of Housing and Local Government through the Ministry of Education an application, supported by a resolution, for block loan sanctions amounting to £x, based on an estimate of the authority's capital expenditure to be incurred on education over a period of one year (or longer). The application distinguishes between the main types of capital expenditure carrying different loan repayment periods in order that the block sanctions may be issued for the appropriate periods.

2. As each project, or group of projects, included in the block sanctions is undertaken the authority furnish details of the estimated cost, plans, etc., to the Ministry of Education for approval, and borrowing in respect of the project against the block sanction may not take place until the Ministry's approval has been received.

3. When the block sanctions are nearing exhaustion, the authority may apply for further sanctions.

The advantages of the scheme are the obvious saving of work in local authority departments and that there is no necessity for a separate sanction where the cost of a particular scheme exceeds the original estimate, or where an alteration is made in the programme approved, so long as the block sanction is not exhausted.

How Many Voted?

It might be of interest to the public, while it has figures fresh in mind from the general election, if information existed showing what proportion of vacant seats was contested at this year's local government elections, and what percentage of the electorate voted. From a rural district which is partly industrial we have statistics for this year, 1949, and 1952, showing that contested seats in the rural district council election were 50 *per cent.* more in 1949 than in 1952, and in 1955 not far short of 1949—*i.e.*, a marked increase over 1952. The average percentage of polled votes in each parish was, however, only fractionally higher than in 1952, and nowhere near as high as in 1949. In the parish council elections

for the same rural district, five-sixths of all seats went uncontested this year; in 1949 more than one in three were contested, and in 1952 more than a quarter. It is natural, therefore, that the average percentage of polled votes has also fallen year by year, although it is not markedly lower than in the election for the district council. Of the electors who went to the poll, few spoilt their ballot papers; this probably means that people did not go at all unless they meant it seriously. When so much is regularly said about electoral apathy, we do not think that a poll of one-third of the electorate, for the district council and parish councils (taken as an average), was too bad. It might be worth while for the associations to collect similar information for all five ranks in the hierarchy of local governing authorities, in view of the widespread talk about apathy in the world of local government.

Public and Private

In connexion with our article at p. 278, *ante*, we are reminded that there is another side to the picture of a member of Parliament's concerning himself in local government affairs. There can be no objection to his acting as the mouthpiece for a local authority, as for any other body or person in his constituency, where an issue lies solely between them and a Minister. When such an issue arises, it may be considered that the local authority or private person as the case may be is getting less than is due at the Minister's hands: it is a legitimate case of "grievances before supply" and, although the member of Parliament can hardly ever be in a position to discover where the merits lie, he is not doing anything unconstitutional in presenting his constituent's case. But suppose the issue is not between the local authority and a Minister, but between a private person and the local authority, with a Minister put by Parliament into the position of weighing the opposing claims.

We are told of a case where a local authority, whose borough returned two members to the House of Commons, desired certain trading powers which could be granted by ministerial order. The appropriate Minister directed a public local inquiry (by a member of the bar), at which the council's application was promoted by the town clerk and opposed by solicitors acting for a dozen or more firms whose interests, they said, would be damaged if the powers were given to the council. After a protracted hearing, and consideration of the report of the inquiry, the Minister rejected the application. The chairman of the trading committee of the council then went to London; and saw the two local members at the House of Commons. They obtained a private interview for him and themselves with the Minister, at which (behind the backs of the opposing traders) they urged him to reverse the decision he had reached in favour of those traders after the public hearing of their case. The town clerk, to his credit, declined to accompany the chairman, saying that the public hearing had been held; he had lost the case, and he could not decently be a party to attempting to reopen it in private. The Minister, after seeing the two members of Parliament and the committee chairman, declined to alter his decision; a stronger Minister might well have refused to see them on the matter at all, after there had been a public hearing. But suppose the Minister had given way? What idea would the traders concerned, and the local public, have entertained about ministerial justice and the value of public inquiries, as a protection to private persons whose interests are threatened by local authorities?

We have dealt with this episode at this length, partly because it has a bearing upon current discussions going on in *The Times* and elsewhere, which we hope to deal with before long, and still more because we should like to suggest that if local authorities wish to be free (as we assume they must) from improper interference by members of Parliament in local government, they ought on their side to adopt a self-denying ordinance. They should, that is to say, like the town clerk in the case we have recounted, make it a point of honour not to employ members of Parliament as guides to the back stairs, when something they have sought to obtain through the front door has been refused to them, because it would be detrimental to the interests of persons whom the Minister concerned had a duty to consider.

Mortmain Imbroglio

We spoke at pp. 6 and 16, *ante*, of a change in the law made by the Mortmain and Charitable Uses Act, 1888, perhaps inadvertently, and of results which could have not been foreseen. Notably, the advisers of the Crown could not be expected to sit down under the liability to perform covenants entered into by persons between whom and the Crown there was no contractual link. Members of the House of Commons who had been pressing the Attorney-General to accept the forfeitures of the estates of foreign companies without more ado (*see* p. 7, *ante*) were of course interesting themselves on behalf of occupiers who had become tenants under the Crown by operation of law, but it has now been established by the Court of Appeal in *A.-G.* v. *Parsons and Others*, *The Times*, May 11, 1955, that the principle applies equally to covenants enforceable against the Crown as tenant, where, as in *Morelle, Ltd.* v. *Waterworth* [1954] 2 All E.R. 673 and *Morelle, Ltd.* v. *Wakeling* [1955] 1 All E.R. 708, the interest forfeited by alienation to a foreign company was a leasehold only. As between the Crown and sub-tenants, typically occupants at weekly rentals, it might have been advised to accept contractual liabilities, seeing that with such property the lessor's covenants are not generally onerous, and (it seems) the notional covenants invented by the Housing Act, 1936 (or rather by the statutes consolidated by that Act) and by the Housing Repairs and Rents Act, 1954, would not apply. But where the Crown has, by an undesired forfeiture of leasehold property, been put in the position of a lessee bound to a lessor by covenants, the burden may be serious. We said in effect at p. 8, *ante*, that one could not imagine a Plantagenet or Tudor sovereign admitting obligations thus imposed, but they were not affected by the Crown Proceedings Act, 1947. Now that the benefits accruing to the Crown from its landed property pass to the Exchequer, and the Act of 1947 has simplified and facilitated claims upon the Exchequer by private persons arising out of contracts made with the Crown's predecessors in title in a case of forfeiture, it looks as if legislation is unavoidable. Such legislation will, we prophesy, not be as easy to devise as it might have been when we suggested it at p. 8, *ante*, before the latest case went to the Court of Appeal.

The Lord Mayor's National Air Raid Distress Fund

The final survey of this fund has been published in an excellent booklet which will provide lasting evidence of the help which was given in spending the £5 million which was collected in large and small contributions from many parts of the world. Some idea of how freedom-loving people opened their hearts and contributed can be gauged from the statement in the report that the Dominions and Colonies, and the United States of America, contributed nearly £3 million while countries from other parts of the world sent £733,583. That the fund was economically and wisely administered is apparent from the fact that the total cost of collecting and administering it was equal to only about

one *per cent.* of the receipts. Since the end of the war some of the money has been spent on educational grants for boys and girls whose parents suffered through raids, and there have been many reports of the successes achieved by those on whose behalf the grants were made. They have gone into a large variety of professions and occupations. Towards the conclusion of hostilities, the sad plight of old people who had lost their homes engaged the attention of the committee of the fund. Action was taken, with the co-operation of the W.V.S. and the National Old People's Welfare Committee, so as to make some contribution to meeting the hardship and suffering of old people caused through lack of housing accommodation. In this way, help was given in the starting of 153 old people's homes in various parts of the country. In December, 1952, the committee considered the disposal of the final balance of the fund and it was decided that this should be used to meet certain deficiencies caused, or accentuated, by air raids. Grants were made to the most-bombed areas towards the provision, development and equipment of old people's clubs, youth clubs and children's playgrounds. A considerable sum has also been spent in establishing Commonwealth Memorial Homes. Each of these consists of groups of bungalows for old people, usually with some communal accommodation. They have been erected in 21 cities with additional schemes in London.

Transfers between Police Forces

When a policeman transfers from one force to another there are customarily two alternative methods of dealing with accrued service. The first is for the force from which he transfers to retain his superannuation contributions and on his retirement to pay into the funds of the police authority with which he was serving immediately prior to retirement, an annual contribution towards his pension based on salary and length of service at date of transfer. The alternative method is for the policeman to resign from the force when he will receive a return of superannuation contributions less any income tax which is due on the refund, and subsequently payment of the gross amount of his contributions into the funds of the force to which he transfers.

Because it has certain advantages the latter method is the one more generally adopted at the present time but the tax element may well cause hardship, even if only of a temporary nature, to the officer concerned. Section 378 (1) of the Income Tax Act, 1952, provides that " sums contributed by any such individual for any year may be deducted from the amount of his emoluments to be assessed to income tax for that year " and it is thus possible to recover the tax by re-opening previous tax assessments—but the time factor is very important. The taxation mills grind slowly: the machinery is even less speedy when put into reverse.

We therefore welcome the recent decision which we are informed has been made by the Chief Inspector of Taxes that in the case of direct transfers between police forces deduction of tax need not be made from refunded superannuation contributions. In the past a practice has obtained with certain forces whereby a direct payment equivalent to total superannuation contributions has been made between the two forces on the signed request of the policeman but this procedure, although eminently reasonable, was open to question and the decision now made removes doubt and eliminates a possible source of grievance.

THE " J.P." AS FORUM

STUDIES IN ITS CORRESPONDENCE COLUMNS

By THE REV. W. J. BOLT, B.A., LL.M.

In its first issue, dated January 28, 1843, the " J.P." announced its ambition of providing a forum for the legal profession. " While the agency of the press is resorted to by several of the other orders of society, as the clergy, the medical, and a branch of the legal profession, for protecting their interests and supplying the information properly belonging to each of them, it is a matter of some surprise that so large and influential a part of the community as that comprising justices of the peace, clerks of the peace, clerks of petty sessions, town clerks, and parochial officers, is yet without this universal means of communication."

The same project inspired a much later editor. In 1917 at p. 461, the journal sought to create a forum on " improvements in the law and practice of summary courts," but ruefully announced, in 1918 at p. 51, that there had been no response to this appeal.

Nevertheless, a wide survey of the correspondence over many generations reveals that these hopes were not disappointed. One type of letter, the inquiry for information, soon established itself as a separate species, and " Practical Points " appeared very early as a permanent feature. Today, I am looking at the other sort of communication, which either ventilated opinions, sounded professional feeling, corrected the editor, or supplemented the answers given in " Practical Points."

Letters in the very first volume (pp. 41 and 55) reveal that even in 1837, " The Abolition of the Lay Magistracy " was being mooted. The misgivings of that generation found expression in such missives as " Jury Men " (1843 at p. 287) and " On the Desirability of Holding Petty Sessions in Inns " and in the sustained controversy on the value of Grand Juries (1848, pp. 266, 351, 367, 398). In the early years, correspondents were diffident about signing their letters, and used such masks as " An Original Subscriber," " A Subscriber for Eight Years," " A Primitive Subscriber " (he wrote " On the Rank of Esquires " in 1846), and (1848 at p. 361) " A Real Reformer, but No Chartist." Was there some Senator McCarthy whose prestige made this qualification necessary?

We find paraded here the topics which exercised the magisterial minds of the day: Burials (1849, p. 499), The Precedence of High and Petty Constables (1850, p. 31), the ineptitude of the old local constabulary (1850, p. 793), and poaching (1858 *et ad infinitum*). Philanthropic and reformist societies began quite early to use the " J.P." as a sounding-board. The Secretary of the " Alleged Lunatic's Friend Society " put in a plea for a more sensible law of certification (1850, p. 665), and the Early Closing Association was allowed space for its propaganda in 1852 at p. 667.

In 1856, an editorial " On the Application of Vagrancy to Card-playing " (p. 546) caused a flutter among readers (*see* pp. 575, 586, 638); and (1859, p. 42) a Vicar of Sherborne sent

in a lengthy letter he had received from the Bishop of Salisbury about Church ceremonial.

Mid-century magistrates had at their disposal a valuable forum which made available to the whole fraternity an abundance of wisdom and information which would otherwise have lain sunless in private writing-desks and office-files.

One magistrate has corresponded with the Secretary of State on the correct oath to be administered to Volunteers (1859, p. 747), another has a counsel's opinion given by Cockburn, L.C.J., in 1852, when he was at the bar, on the use of the stocks (1860, p. 398), another can cite replies given to him by the Inland Revenue on the validity of certain licences (1861, p. 142); and the "J.P." makes these available to all the magistrates in the kingdom. The golden age of Whitehall circularization has not yet dawned, but private enterprise, that is, the "J.P.," has established an effective intelligence service.

Mars could not be more exotic than the world some of these effusions disclose to us. Look at X.M.N.'s letter in 1860 at p. 687, "The Horsey Prosecution—Should Clerical Magistrates Adjudicate in a case of Fornication in a Churchyard?" Clerical magistrates still abounded, and the "J.P." shows how uneasy some sections of the bench and public were becoming about them. One correspondent is collecting statistics about them over a number of years. (*See* 1861 at p. 319 and 1869 at p. 655.) The "J.P." records of their misdeeds would make good reading.

A letter in 1861 at p. 495 discloses an obsolete piece of jurisdiction, "the power of magistrates to extend the leave of Marines if not serving with the Fleet." In that year, many correspondents recorded their perplexity over the interpretation of recent regulations for the sale and storage of gunpowder (*see* 1861 at p. 683). Throughout the century, the game laws were a permanent besetment to the rural community and a chronic source of harassment to the magistrates. There are typical letters in 1863 at p. 527 and 1862 at p. 462.

Rarely, other sections of the community use the journal to air their views. In 1863 at p. 508 "A Schoolmaster" vents pedantic sarcasm on a Parliamentary Bill to sanction the decimal system.

A Bill introduced in 1872, to regulate the appointment of justices' clerks and pay them by salary instead of by fees, drew much fire. The editors of the "J.P." always displayed great sympathy for this branch of the profession, and allotted much space to its grievances. Typical letters about this Bill appear at pp. 190, 206, 335, 336, 382. The writer at p. 206 deserves to be quoted in full:

"Gentlemen: I am desirous to avail myself of your invitation for suggestions on the Justices' Clerks' Salaries Bill, to draw attention to that part which limits the choice of justices of their clerk, to attorneys. It must not infrequently happen when a vacancy occurs, that the justices have with them a person who, by a long service in their office, has gained their confidence and whom they know to be as thoroughly competent to do the work and advise them, as any gentleman upon the roll of attorneys; and yet, if this Bill passes in its present form, they will be obliged to pass him over and appoint some attorney of whom they have little or no knowledge. It is a matter in which justices might well complain, and it is also unfair to the assistant clerks, for there must be some of them who, not being attorneys, have taken their situations (and many more who have worked hard in them) in the expectancy of eventually obtaining the chief appointments. To me personally it will be a great disappointment and there must be many like me. I am a member of the Civil Service and have been attached for many years to a metropolitan police court. I have long seen that my chances of obtaining a decent competency in this service are very remote. The foul air of these crowded courts I find each day more enervating, and I determined to work hard and use all my endeavours to obtain an appointment as clerk to the justices in some other place; and I venture to think I am now, through close study and the great daily experience I have gained in the police court to which I belong, as well able as most attorneys to perform the duties of such an office. The Bar, at which I might have studied if I had gone to any other branch of the Civil Service, is closed against me; and now there is a prospect of this Bill taking away the only opening I have of advantageously using the knowledge I have acquired by many years of patient study. I am, Gentlemen, Your most obedient servant, C.S."

The Summary Jurisdiction Act, 1879, produced a great spate of letters in the volume of 1880 (see specimens at pp. 179 and 195), and in the same year there were many letters (*see* pp. 675 and 727) on the new six-day liquor licences.

In the 1870's, the forum is even more in demand; readers discuss many minutiae of magisterial law and practice whereon *Archbold* and *Stone* gave no guidance. A letter in 1873 at p. 302 claims that magistrates have a power to punish for contempt of court, and another in 1874 at p. 207 examines the fine point whether workhouse chaplains are exempt from toll. Professional discipline was laxer than today, and the "J.P." frequently, in its reports or discussions of cases, corresponded with the counsel who were briefed, and published their replies. *See* 1882 at p. 159, where the comment of counsel was to be corrected by a reader at p. 191.

The growth of social clubs, and especially "working men's clubs" evoked a perceptible nervousness in the country gentry; and there is a good period piece in 1872 at p. 735, following an inquiry at p. 719.

"Gentlemen: I beg to say that a club within the last few days has been established at S in my division. The club is composed of about 30 members, eight whom are shareholders. The meetings are held once a week in unlicensed premises. Members are supplied with any intoxicating liquors, cigars, etc., the profits going to the shareholders as dividend. The club is called the Constitutional, and the only apparent objects as stated in the rules are social intercourse and card playing. The only limit as to closing is that no game shall be begun after 12. The officers consulted the supervisor of excise, who says he has no instructions as to clubs and 'that if he attempted to enter, he should expect to be turned out.' I should be very glad to know where I may find any information on clubs of this kind."

With the flight of years and the growing precision of the law, readers become more critical; and the editors begin to receive, and with due humility to publish, affectionate corrections of small errors. *See*, for instance, 1881 at p. 198, 1882 at p. 159, 1882 at p. 703, 1883 at p. 31, 1889 at p. 362.

The range of topics widens: the education system of the Isle of Man (1880 at p. 242), a proposal to restore corporal punishment for juvenile offenders (1880 at p. 643), the paging of the "J.P." (1885 at p. 783) and (1887 at p. 719), a letter from the author of the Probation Act, Col. C. E. Howard Vincent, expounding the measure. A correspondent in 1889 at p. 827 discusses the propriety of a solicitor practising before a bench to whom his partner is clerk; and in 1889 at p. 831 and 1890 at p. 12, we have glimpses of an issue which perturbs readers sporadically, the precedence of mayors over other magistrates.

In 1889, the clerk to the magistrates for the city of York, sounds a clarion call to action. At p. 254, he urges all the fraternity to memorialize the Home Secretary on the defects

of an Industrial Schools Bill which Parliament is debating. In 1891, the Oldham clerk submits to the Home Office (p. 238) a complaint which brings the "J.P." a letter on clerks' remuneration.

A Home Office circular to the clerks, quoted in 1891) at p. 377) is redolent of the old order. "I am directed by the Secretary of State to inform you that complaints have been made to him by Her Majesty's judges that the depositions which are delivered to the clerks of assize in connexion with indictable cases, are taken down in writing which cannot be read without constant effort and annoyance and great loss of valuable time. Mr. Secretary Matthews desires me to request that in future such pains may be taken to record statements of witnesses in all cases in a plain and easily legible writing"; whereupon the clerk to the Halifax magistrates writes to the "J.P." (at p. 445) commending the use of the typewriter.

More societies enter the lists. In 1894 at p. 519, the Income Tax Repayment Agency submits the first of several letters declaiming against the inquisitorial methods of the Inland Revenue. The Solicitor to the Licensing Laws Bureau, Nottingham, appears in 1897 at p. 746; and the Anti-Gambling League discourses on Street Betting (1906 at p. 619).

Around 1897, one of the more prolific correspondents makes his debut, Thomas Cousins, a veteran clerk of the peace at Portsmouth. For years he submitted knowledgeable comments on points of practice, and shared the mounting aversion to Grand Juries. He was often mentioned in the personal columns, and was apparently the author of a *Justices' Pocket Manual*, "on etiquette," about which a correspondent is inquiring in 1906 at p. 486.

Towards the end of the century, several topics stimulate prolonged correspondence. An editorial in 1895 at p. 50 calls forth many letters on Imprisonment for Debt, and in 1896 there is a long exchange on Justices' Signatures, culminating in an editorial at p. 259. In 1901, correspondents thrash out the problem, "Should a Coroner be a Medical Man?"

In 1896 at p. 800, one Voco writes in the hope of founding a Justices' Clerks' Association. If he had read earlier volumes of the "J.P." he would know that a Justices' Clerks' Society had at one time been a flourishing movement.

A delightful scrimmage comes to light in 1897, when a District Auditor, Mr. W. A. Casson, disallowed a payment of £13 8*s.* 7*d.* as professional fees, to one Leicester Gataker, a water-diviner. The incident is reported at pp. 367 and 521, and correspondence from readers appears at pp. 412 and 448. The editor came out on the side of the sceptics, and an article at p. 387 asks whether water-diviners may not be amenable to prosecution under the Vagrancy Acts.

In 1903, there is prolonged and heated correspondence over the *Farnham* case, a decision under the Licensing Acts; and, to relax the tension, a mild clamour for the wearing of cockades by magistrates (at pp. 90 and 103). This agitation becomes louder in 1909. *See* pp. 319, 341, 327, the erudite comment by Professor W. W. Skeat at p. 365, and the inquiry at p. 308. And in 1908 correspondents are pleading that a distinctive insignia should be worn on the bench (at 1908, pp. 368, 392, 404, 426, and the editorial at p. 422). Many letters on the formality of taking the oath were sent in at this period. One commended a hygienic wrapper for the Bible, and another (1906 at p. 92) extols the superiority of the Scottish form of oath.

In 1910 an editorial, "The Justice at Home" recites the volume of duties which fall to the magistrate outside the court-room; and one of the great unpaid sent in this homely little comment (p. 353). "Sirs, I had a good many years experience living in a district which was changing rapidly from a residential neighbourhood to a crowded suburb. The local court was some three miles away . . . It is clear that a man who undertakes the duties of a justice should not do so for his own gratification but he ought to be prepared to sacrifice such time as necessary to help his poorer neighbours when possible, as well as to have the possible minute damage done to his carpets, etc. I may add one useful hint. I made it an invariable rule that if female applicants were admitted to my study, the door to the hall was left wide open so that there was no privacy in the interview. J.P."

There are two noteworthy contributions on the custody of parish registers in 1912 at pp. 465 and 497.

Every generation of readers produces a few enthusiasts for the externals of the law. In this period we may notice, the precedence of magistrates (in 1907 at p. 618), the wearing of hats in court (in 1911 at p. 404), the custom of the white gloves (in 1913 at pp. 176 and 188), the magistrates' right to order the military to uncover (1914 at p. 484 and 1915 at p. 57).

1915 introduced the most prolific and versatile correspondent who ever illumined the columns of the "J.P.," J. Theodore Dodd. A news-item in 1917 at p. 384 mentions him as addressing a Cheltenham meeting to agitate for women magistrates, but I have found no other record of him. From 1915 to 1929 he contributed letters on an imposing variety of topics. His chief concern was poor-law administration, but he wrote with authority on much else. In 1917 at p. 426, a critic rebuked him for saying, at p. 410, that the Probation Act had become a dead letter. In 1917 at p. 207, he was citing *Lyndwood*, in 1919 at p. 323 he was quoting Bertha Putnam to show that England had women on the bench in the sixteenth century; in 1923 at p. 28, his text is "less eligibility," in 1923 at p. 519, "Rank and Station in Church," in 1929 at p. 144, an anomaly in club law, at p. 798 (*see* also p. 815) "Church-going." *Lyndwood*, Bertha Putnam, Less Eligibility! What an uncanny trio to jostle in one man's mind! How many practitioners or magistrates could, as the examiners say, write notes on any two? He must be respected as a scholar who had plumbed rare depths of legal learning.

The 1916 Military Services Acts provoked many letters, and in 1918 at p. 75, the Secretary of the National Sunday School Union is granted space. Correspondents in 1923 were fretting about the survival of the phrase "police court" (pp. 128, 146, 148, 332), a Lay Reader was writing in defence of the magistracy (p. 852), and the agitation for State legal aid was under way (pp. 128, 146, 148, 167).

A paragraph in 1923 at p. 340, mentioned that the county council of Holland, Lincolnshire, had decided to bind copies of *Old Moore's Almanack* for the use of the justices, and a sublime footnote appeared in a letter at p. 353.

"Sirs, I also have come across a case of official use of *Old Moore*. There is, or was, supplied in large quantities to every Government department by the Stationery Office, a large almanack known as the *Official Almanack*. In 1916 I was working in a department in Whitehall, and we noticed that the *Official Almanack* gave wrong dates for the various quarterings of the moon, at that time a matter of considerable practical interest on account of the air-raids. This was pointed out to the Stationery Office and produced the explanation that the astronomical details in the *Official Almanack* were obtained not, as might be expected from the Astronomer Royal, but from *Old Moore's Almanack*, and hence the errors. I do not know whether the Stationery Office still retail to the departments the wisdom of the aged oracle. Yours faithfully. G.M.M."

Long after the "J.P." enlarged its purview, magisterial interests still dominated the correspondence columns, but the forum is less in demand. New topics are mooted: the fitness of M.P.'s to perform magisterial duties (1925 at pp. 307 and 385) the absence from the witness-box of the Douai Bible (1930 at p. 73); but many old strains persist. In 1924 at p. 90, the clerk to the Huddersfield justices cites a recent information for eavesdropping, in 1927 at p. 601, Mr. R. A. Clayden, police court missioner at Peterborough, corrects a "J.P." report; in 1928 at p. 463, the Cancer Hospital has a letter appealing for support, in 1932 at p. 560, a justices' clerk has a grievance about his remuneration; and in 1944 at p. 549 a police inspector champions the cause of police advocacy.

In 1945, correspondents are noticing that the clergy have disappeared from the bench. A letter at p. 454 recalls one at Windsor in 1930.

In that year, the "J.P." fell foul of a professional organization by suggesting that, to escape the alleged profiteering of undertakers, municipal authorities should create a new public service, "municipal funerals." This drew forth an indignant retort from the President of the Funeral Directors' Association (p. 333), "Dear Sir, Your editorial on this subject seeks to stigmatize the funeral director as one who battens on the public at the time of its deepest distress, when minds are not normal and when, it is suggested, a mourner can be worked up into spending more than is economic or necessary . . . It is this service that is the banner of the trained funeral director, the helping and advising of the public in a professional manner when needed." We must admire the editor who gave his readers the other side of the question, though he must publish so severe a trouncing of himself.

In 1945, "Magisterial Dress" was still agitating the minds of readers. *See* pp. 602 and 604.

The 1947 volume is enlivened by a correspondence on "Police English," the highly specialized terminology which constables used in the courts (pp. 123, 195, 275, 290, 360, 371). One lawyer could write (p. 195): "Ever since the day, over 20 years ago, when as a newly articled clerk I heard a police officer reproved by a judge of the King's Bench Division for use of the word 'altercation' I have been either appalled or amused by the jargon affected by policemen." But the solicitors did not have it all their own way. The letter at p. 290 urges that the law should set the police an example in simple diction. He cites the lawyers' affection for Hereintofore, Hereinafter, Ascertained, and Aforesaid, and mentions the Indictable Offences Act, 1848, where two whole pages of verbiage are unbroken by a single full stop.

An old feud is re-opened in 1948. An article on Police Advocacy at p. 135 brings in contentious letters at pp. 343, 464, 537, 544, 592.

Throughout its years, its readers flog bitter issues with an academic restraint; but I cannot refrain from quoting a deep fulmination against the B.C.C., in 1948 at p. 736. "'Mr. Muddlecombe, J.P.' Sir, The other evening while twirling the dials of my radio, my ears were smitten by the announcement that the above named would shortly hear the cases of the day in his police court. I listened, and quite frankly was appalled by what I heard. If this sort of broadcast is supposed to be amusing or a good advertisement for British justice, then I can only despair of those in charge of our affairs at the B.B.C. However, to continue and explain my impressions. After a good deal of nonsense on the part of Mr. Muddlecombe, he took his seat. The first case was called, a youth charged with breaking and entering enclosed premises with a gang of hooligans, and doing damage. The youth was brought into court under arrest by the local constable (obviously of low intellect), who complained that the boy was hacking his shins and was a dangerous criminal. Mr. Muddlecombe seemed to think nothing of this behaviour, which culminated in the accused throwing books and inkpots at the bench. After ridiculous dialogue between accused, Mr. Muddlecombe and the constable the case was dismissed and was followed by another case on red petrol. I need hardly point out that Mr. Muddlecombe was in no way advised at any time by a clerk to justices, and he would appear to be a sort of cross-bred stipendiary. Now all this may be very amusing to people who wish to ridicule the law and the work of the hard pressed justices of the peace; but to broadcast such a performance at the height of a crime wave, seems to me utter folly. Imagine any child listening to this nonsense just before he or she is about to be brought to a juvenile court for trial. The old fashioned respect for the justice of the peace is fast disappearing in any case among juveniles: and it is no help to set them the example of this fatuous broadcast. I have checked up with some friends who represent a cross-section of the community, and they are all of one mind that this sort of thing does nothing either to amuse or enhance our prestige. What listeners abroad must think of our local administration of justice. Can your respected journal do anything to bring some pressure to bear on those responsible, to have these damaging and pointless broadcasts brought to an end at once?"

At p. 847, we find a reply from Sir E. Marley Samson, saying that the Magistrates' Association had approached the B.B.C., with a protest against Mr. Muddlecombe, 18 months before. Then, a magistrate had been portrayed as adjudicating under the influence of drink, and as inviting a female defendant to meet him in a public house after the court had risen. The Association were now drawing the attention of Sir John Reith to the breach of the assurances he had then given.

There is one more rare flower in my anthology, from 1849 at p. 31. This correspondent embodies for me the Victorian magistracy in its heyday. His style is laboured, yet beautifully evocative. He is blessed with a life of leisure, but he dedicates it to the faithful fulfilment of his great office. To him, the "J.P." is the fountainhead of wisdom, and his study of its pages has become a sacred duty. It is his Koran, and he handles it with a meticulousness that would befit a religious votary. But let him speak for himself.

"I have just risen from the perusal of the first number of the thirteenth volume of the 'J.P.' and I am glad to find it fresh and vigorous as ever . . . I am one of the many who hold myself under obligation to you for the many prompt and able replies to questions I have submitted to you, and I feel a pleasure in acknowledging and appreciating the obligation. The last paragraph in your opening article now prompts me to ask one more; not however as a grumble, but in the hope that it may conduce to the good of *The Justice of the Peace*.

"I file the numbers and bind the volumes as they are completed. To those only who do this will my remark be of any use. It is briefly this: in 49 cases out of 50, the numbers come to me so miserably folded that I am obliged to devote a considerable time to each, in order to get them into proper creases. A little attention on the part of the folders would obviate all this. I do not wish to draw any invidious comparison, but I do take other journals: and all I have to do on the arrival of each number of them, is to stitch them through the middle. If I were to treat my 'Justices' so and cut them accordingly, they would be of no use to, Gentlemen, Your very obedient servant, W. J. WELSH."

(*To be continued.*)

RECOVERY OF POSSESSION BEFORE MAGISTRATES

By LORD MESTON, *Barrister-at-Law*

Proceedings to recover possession may be taken before magistrates under the Small Tenements Recovery Act, 1838. Section 1 of that Act provides in terms that where a hereditament has been held by a tenant at will or for a term not exceeding seven years, either without a rent or at a rent not exceeding £20 a year, and the tenancy has been ended, then, if the tenant or any other person in actual occupation refuses to give possession, the landlord may give him written notice of his intention to proceed to recover possession. It will be convenient to refer to the person so refusing as " the tenant," although in reality he is an ex-tenant, or (often) a person who has occupied by permission of the tenant, and has himself never held a legal interest in the premises. If the tenant does not appear, or fails to show cause why he does not give possession, the justices may issue a warrant directing constables to give possession. The written notice above-mentioned must be in the form (*i.e.*, form No. 1) in the schedule to the Act. Failure to give that notice is not a mere irregularity or a formality under the statute, but a fatal defect which invalidates all the proceedings —*see Lewis* v. *Gunter-Jones* [1949] L.J.R. 769 C.A., where there was a failure to serve the notice on the actual occupier. And there must always be strict compliance with the statutory requirements. In *Bowden* v. *Rallison* [1948] 1 All E.R. 841; 112 J.P. 283, the landlord let to the tenant a cottage, within the Rent Restrictions Acts, under the terms of an agreement which provided for six months' notice on either side and stated that the rent was 4*s.* a week. Later, on the landlord's taking proceedings for possession under the Small Tenements Recovery Act, 1838, the statutory notice given by the landlord under that Act did not state the nature of the tenancy, *i.e.*, that it was controlled by the Rent Restrictions Acts or the date on which it was determined. It was held that the notice was invalid and therefore the landlord's application for possession failed. As to the correct signature of the statutory notice, reference should be made to 117 J.P.N. 292, 441, 458.

Section 1 of the Small Tenements Recovery Act, 1838—the phraseology of which is so extensive that it is not desirable to set out the section verbatim—includes a number of expressions and terms which require particular consideration. Some of these have already been discussed in this journal, and in such cases a cross-reference to articles in previous issues will be sufficient. As to what is " reasonable cause " why possession should not be given to the landlord, and the duty of justices to issue a warrant of possession, reference should be made to *Shelley* v. *London County Council* [1948] 2 All E.R. 898; 113 J.P. 1, and *R.* v. *York Justices, ex parte York Corporation* (1949) 113 J.P. 168 and 115 J.P.N. 570, where these matters are discussed.

During the 21 days mentioned in s. 1 of the Act of 1838, the landlord is not precluded from exercising his common law right of entry. In *Jones* v. *Foley* (1891) 55 J.P. 521, the plaintiff was tenant to the defendant of a cottage down to June 24, 1890, when his tenancy expired, but he wrongfully refused to give up possession. The defendant, who was desirous of getting possession to rebuild the cottage, applied for, and obtained, on September 3, 1890, a warrant of justices under the Act of 1838, directing the constables to give her possession of the cottage after the expiry of 21 days from that date. On the same day, September 3, some builder's workmen, acting under the instructions of the defendant, began pulling the house down. In the course of the removal of the roof, portions of the roof unavoidably fell into the bedroom below and damaged some of the furniture. In an action by the plaintiff for trespass and injury to the furniture, it was held by the Divisional Court of the Queen's Bench Division (Day and Lawrence, JJ.) that these facts did not give the plaintiff any cause of action. The defendant was justified in doing what she did. The plaintiff had no right to be in the house; he was a trespasser.

Where the question at issue cannot be properly determined by the justices an action may be brought in the High Court. In *Sivyer* v. *Amies* [1940] 3 All E.R. 285, the landlord of certain premises contended that they were held under a weekly tenancy at a rent of 5*s.* per week, and (a few weeks after giving the tenant notice to quit) applied to the justices for an order for possession under the Small Tenements Recovery Act, 1838. The tenant contended that he was a yearly tenant at an annual rent of £13, and that the landlord's notice to quit had not been the notice required for putting an end to a yearly tenancy; that the tenancy had, therefore, not been " duly determined by a legal notice to quit or otherwise," which by s. 1 of the Act of 1838 is a pre-requisite of proceedings under that Act, and accordingly that those proceedings were not available to the landlord. The tenant sought to produce evidence of the terms of the original letting in support of his case, but the only witness who could give such evidence was a man over 80 years of age, who could not leave his house. This evidence could not be taken except on commission, and the justices had no power to order evidence to be taken on commission. The tenant thereupon issued a writ in the High Court claiming a declaration that the premises were held by him from the landlord on a yearly tenancy. The landlord's application for possession under the Act of 1838 later came before the justices, who declined to deal with the matter until the High Court action was disposed of. The landlord then took out a procedure summons before Crossman, J., in the Chancery Division, in which the landlord sought to have the tenant's action for a declaration of tenancy dismissed as frivolous, vexatious, and an abuse to the process of the Court. It was held by Crossman, J., that in the circumstances the tenant's action in the High Court was properly brought, and was neither vexatious nor an abuse to the process of the Court. This was an unusual case; it does not, as has sometimes been supposed, decide that the Act of 1838 is inappropriate where a tenancy from year to year has come to an end (*see* the reference to a term not exceeding seven years, in s. 1). It does, however, negative any suggestion that the procedure before justices is exclusive, in cases where that procedure is available.

The Small Tenements Recovery Act, 1838, does not apply to a service occupancy: *see Ramsbottom* v. *Snelson* [1948] 1 All E.R. 201; 112 J.P. 160.

Under the Act of 1838 the jurisdiction of the magistrates is limited to premises of an annual value of less than £20. But this limitation of jurisdiction has been expressly widened by s. 156 (2) of the Housing Act, 1936, which provides that " where a local authority, for the purpose of exercising their powers under any enactment relating to the housing of the working classes, require possession of any building or any part of a building of which they are the owners, then, whatever may be the value or rent of the building or part of a building, they may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy of the occupier has expired, or has been

determined "—*see R.* v. *Snell, ex parte Marylebone Borough Council* [1942] 1 All E.R. 612; 106 J.P. 160, and also 113 J.P.N. 43, and 116 J.P.N. 665, 679, where this matter was fully discussed.

The impact of the Rent Restriction legislation on the Small Tenements Recovery Act, 1838, must be carefully noted. Section 4 (4) of the Rent and Mortgage Interest Restrictions Act, 1923, provides that " Notwithstanding anything in s. 143 of the County Courts Act, 1888, or in s. 1 of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct." The true purport of this section has been often misunderstood; it is examined at 110 J.P.N. 576. Upon applications for possession under the Small Tenements Recovery Act, 1838, of premises which are also within the Rent Restrictions Acts, it often happens that the justices, at the time they direct the issue of the warrant, state that during the three months of the warrant's efficacy it shall not be executed so long as the tenant performs such terms and conditions as they may direct. Unless the warrant is extended by the court that orders its original issue, the warrant expires and comes to an end, so far as any efficacy is concerned, at the end of three months. Difficulties have sometimes arisen through justices making orders for possession and then suspending their operation for a substantial period. Moreover the use of the term " conditional order " may give rise to speculations and doubts as to its precise operation. These matters were carefully considered by the Court of Appeal in *Mills* v. *Allen and Others* [1953] 2 All E.R. 534, where the Court strongly expressed the opinion that, where it is desired to suspend the order for possession for an indefinite period, there is much to be said for making an order that the defendant should be required to agree to pay the rent and arrears, or perform whatever other conditions the court may think proper; that the agreement should be recited in the order; and that the court should make no order for possession, but should give liberty to apply for an order for possession on breach or non-fulfilment of the conditions. If any order for possession is then made, it is likely to be an absolute order, and nobody is left in doubt as to its effect.

Section 3 of the Small Tenements Recovery Act, 1838, provides what is in effect an appeal from the decision of the magistrates by an action of trespass against the person to whom a warrant of possession is granted. If the landlord has no lawful right to possession he is guilty of trespass and has to pay double costs, even if he has merely obtained the warrant and has never entered. The obtaining of the warrant may be treated as a trespass, but if the landlord has a lawful right to possession the plaintiff fails in the action. The statute gives a clear right to bring an action of trespass, and the magistrates are bound by the statute to bind the tenant over, provided he produces the sureties required by the Act. In *R.* v. *Droxford Justices, ex parte Knight* [1943] 1 All E.R. 209; 107 J.P. 76, the applicant for an order of *mandamus* was the tenant of a house which the landlord wanted for occupation by one of his men, and in due course a notice was served upon the tenant under the Act of 1838. Application to the magistrates was then made by the landlord for possession of the premises. The tenant took various objections to the notice, but the magistrates took the view that every requirement of the Act had been properly satisfied, and they granted the warrant. The tenant, however, was not satisfied with the decision of the magistrates and he commenced an action for trespass against the landlord in the county court, alleging (*a*) that the notice under s. 1 of the Act of 1838 had not been properly explained and (*b*) that the tenant was entitled to the protection of the Rent Restrictions Acts. The tenant then applied—as he was entitled to do—under s. 3 of the Act of 1838 for a stay of execution. The magistrates said that they had already determined the question whether there had been a want of compliance with the provisions of the statute with regard to the notice. The magistrates said nothing about the application to approve the sureties, thus depriving the tenant of whatever rights s. 3 of the Act of 1838 gave him, with regard to a stay of the execution of the warrant which had been granted. The tenant having applied for an order of *mandamus* directed to the magistrates to exercise the jurisdiction conferred on them by the Act of 1838, it was held by the Divisional Court (Viscount Caldecote, L.C.J., and Humphreys and Tucker, JJ.) that the magistrates should have considered the question of sureties and approved them or not, as they thought proper, since they were bound by the Act to bind over the tenant so long as proper sureties were produced. In such proceedings for trespass questions of procedure under s. 1 of the Act of 1838 are no longer relevant. The substantive rights of the parties are then tried. In *Lewis* v. *Gunter-Jones, supra*, the landlord let a cottage to Frederick Walker, the tenant, at 2*s.* 6*d.* a week. Later the tenant was called up for military service and ceased to live at the cottage, but he left his furniture there. Lewis, the plaintiff, who was a relative of the tenant, went to live at the cottage. There was no evidence as to payment of rent or of a fee for a licence. At the end of the war the tenant returned to civil life and asked Lewis to leave the cottage, but he did not do so. Later the landlord gave the tenant notice to quit and the latter took away his furniture. Lewis still remained at the cottage. The landlord took proceedings to recover possession of the cottage under s. 1 of the Act of 1838. He gave written notice under that section to the tenant in the statutory form of his intention to proceed for possession, but he gave no such notice to Lewis. The case having been proved against the tenant, Walker, the justices directed that a warrant of possession should be issued under the Act of 1838. Lewis then brought an action under s. 3 of the Act of 1838 in the county court against the landlord. The learned county court Judge held that Lewis was simply a licensee whose licence had been determined; he was or had become a trespasser, and that therefore the landlord had a lawful right to possession of the cottage. Lewis appealed, and the Court of Appeal (Bucknill and Denning, L.JJ., and Jenkins, J.) pointed out that, although the failure to give Lewis the requisite statutory notice under s. 1 of the Act of 1838 invalidated the proceedings for possession taken by the landlord, yet Lewis had brought his action in the county court under s. 3 of the Act of 1838, and in such an action all questions of procedure under s. 1 of the statute went by the board. The question in the county court was as to the substantive rights of the parties. On the facts of the case, the Court of Appeal agreed with the learned county court Judge and dismissed the appeal. But that did not mean that the warrant under the Act of 1838 was good. If necessary, the landlord must bring an action in the county court for possession.

ADDITIONS TO COMMISSIONS

NEW WINDSOR BOROUGH

Major-General Edmund Hakewill Smith, C.B., C.B.E., M.C., Mary Tudor Tower, Windsor Castle.

Mrs. Marjorie Mary Pressey, 26, Maidenhead Road, Windsor.

Francis Eugene Thomas, 25, High Street, Windsor.

MACHINE TURNED OR HAND FINISHED

It is a thousand pities that the merits of comprehensive schools have become involved with politics. Under the conditions of English public life this may have been inevitable; if the large local authorities who have been inclined to make the first big experiments with comprehensive schools had happened to have Conservative majorities, and had still moved towards those experiments (as might easily have happened) we do not doubt that the Labour Party, which hitherto has been the upholder of such schools, would have produced excellent "democratic" reasons for objecting to them. That is life, as it is lived under a system of popular representative government. The question is really one which ought to be thought out by those who have studied such schools in other countries, particularly in the United States, and by those who have special knowledge of English educational methods and traditions, and ought then to be decided as impartially as possible, by representatives of the taxpayers and ratepayers who will have to pay the bill—not forgetting the opinions of parents so far as these can be ascertained. At 118 J.P.N. 405, we published an article from an expert contributor, who gave what seemed to us cogent reasons for disliking such schools in English conditions. With his views we inevitably sympathize since, as our readers know, we have (in our own special field of local government administration) come to the conclusion that the large unit is on the whole likely to be less efficient and less in touch with those it governs than the small. In speaking here of efficiency we are, of course, not thinking of the mechanical efficiency which up to a point is obviously better secured by a larger unit. A man whose income is £10,000 a year can have a more handsome bathroom than a man whose income is £500. A public body commanding practically unlimited resources can build finer schools than a small one, and an employing authority with those resources could (if there were no restraints on the operation of supply and demand) hire the most skilful teachers, to cram the most promising pupils to a stage not feasible in an old-fashioned school manned by teachers at low wages. The principle of economics is the same as in any other type of manufacturing enterprise, and the advantage enjoyed by money will attract the new customers, who are also the raw material of the enterprise—in other words, will capture promising pupils from elsewhere. This, however, is not the sort of efficiency of which we have been speaking favourably. We make no claim to be educational experts, but, through the eyes of magistrates and social workers, we see a good deal of what is going on in young people's lives and minds. The very big school, like the very big factory, may succeed in gathering within its boundaries the machinery for turning out every kind of product, but we believe the smaller school, like the smaller area of local government and the smaller firm, is better adapted to maintain human relations, and that inbred loyalty to one's immediate community which is the nucleus of greater and more vital loyalty.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 44.

A MOTORIST CONVICTED IN UNUSUAL CIRCUMSTANCES

A curious story was heard by the Bishop Auckland justices recently, when a man appeared before them charged with an offence under s. 11 of the Road Traffic Act, 1930.

For the prosecution, evidence was given by a driver of a car that he was travelling in the same direction as the defendant, who was driving his motor utility van along a main road. The defendant passed him on the nearside and the van appeared to be out of control, ran on to a footpath and eventually struck a tree.

The police gave evidence that the defendant was put in an ambulance after the accident and on the way to hospital said "I don't know what happened." In a voluntary statement made to police the defendant said that he had suffered an accident in the 1914-18 war. Since then he had had black-outs, but mainly at night. He had not had anything for two years. He had driven a car since 1929 and never had a conviction or an accident. His doctor had never told him not to drive. He had answered questions 12 and 15 in the driving licence application form, both in the negative. He had never been told that he was suffering from epilepsy or any disabling disease. The doctor had prescribed sleeping tablets. He had never complained about black-outs to his doctor. In the original accident in 1918, he had not received a blow, only shock. He had not seen a doctor for over two years.

Defendant gave evidence on his own behalf that he was driving on his proper side of the road, accompanied by his wife, at less than 30 miles an hour, when suddenly he suffered a black-out. Defendant said he had no reason to suppose he would have a black-out just before the van went out of control, and he called two doctors for the defence. One was the medical adviser of the defendant for over 15 years. He confirmed that he had never told the defendant not to drive a car. He said that from what he had seen of the defendant there was nothing consistent with any form of epilepsy. He had not seen him for over two years. He knew the defendant was driving the car regularly. He thought that defendant must have suffered from a form of *petit-mal*, where there was a temporary loss of consciousness without the patient knowing his condition. He would be conscious one minute and unconscious the next; there would be no warning of the attack. During the whole of the time he had known him he had not suspected a *petit-mal*.

The other doctor had only seen the defendant since the accident, which was the subject of the charge. He gave the result of his examination, which was that the defendant suffered from idiopathic epilepsy; that he thought the defendant had had really major epileptic attacks during the night. This was nocturnal epilepsy. He accounted for the accident by saying that the defendant must have had a *petit-mal*. He said that he was very satisfied about his diagnosis. The whole of the facts pointed to *petit-mal*; there would be no warning of the attack. He said that it was not surprising that the defendant's doctor had not suspected epilepsy.

For the defence, Mr. Stanley Lambert, solicitor, of Sunderland, to whom the writer is greatly indebted for this report, submitted that the defendant had satisfied the onus which was placed upon him. He referred to *Kay* v. *Butterworth* (1946) 110 J.P. 75, and urged that the defendant had no knowledge of his condition and that the medical evidence supported him in making application for his driving licence and in driving the car. The incident was an accident brought about by a sudden and unforeseen illness.

The chairman said the court found the defendant guilty and they were satisfied that the cause of the accident was an attack of *petit-mal*. They found that the defendant might not have known the pressing nature of his illness but was well aware that he suffered from complete black-outs, and that he had such knowledge of his state of health as should have led him to the conclusion that he might be the victim of an attack of sudden unconsciousness at any time.

COMMENT

There have been several decisions within the last few years dealing with the question of responsibility of motorists for incidents which occur when, for one cause or another, they lose consciousness whilst driving and it may be convenient to review shortly the decisions because it would appear that the situation has now become clarified.

It will be recalled that in *Kay* v. *Butterworth*, *supra*, Humphreys, J., stated categorically that a driver who allowed himself to be overtaken by sleep whilst driving was guilty, at least, of the offence of

driving without due care and attention because it was his business to keep awake.

In 1951 the writer, in an article which appeared at p. 426 of that volume, summarized an unreported decision of the Divisional Court in *Edwards* v. *Clarke* heard on May 10, 1950, in which it appeared that in not dissimilar circumstances the Divisional Court upheld the decision of the Malmesbury justices not to convict, and the writer then expressed the view that *Edwards* v. *Clarke* deserved to be at least as well known as *Kay* v. *Butterworth*.

In *Henderson* v. *Jones* reported in *The Times* on March 8 last, the Lord Chief Justice made it clear that *Edwards* v. *Clarke* was not to be taken as authority for the proposition that a man could sleep with impunity at the driving wheel. Lord Goddard said that *Edwards* v. *Clarke* merely decided that on the facts in that particular case there was no *evidence* of anyone driving the car carelessly. It was a case depending on its own special facts, and for that reason it was proper that it should not have been included in the Law Reports.

In *Henderson* v. *Jones*, *supra*, the Chester justices acquitted the defendant of driving without due care and attention although the car driven by her went across to the wrong side of the road and struck another car on the grass verge. Defendant said "I have no excuse. I have had a tiring day. I must have fallen asleep." The Lord Chief Justice, in delivering judgment, said that of course a person who was driving whilst asleep was at the least driving without due care and attention and might be held to be driving dangerously. It was no excuse for a defendant to say that she was asleep.

It is clear therefore that *Kay* v. *Butterworth* stands as good law and that *Edwards* v. *Clarke*, *supra*, should not be regarded as in any way modifying what was said by Humphreys J., in *Kay* v. *Butterworth*.

The case reported above seems to take the matter a little further for the court appears to have accepted that at the moment that the bad driving occurred the defendant was suffering from a temporary loss of consciousness without knowing his condition. The court gave as its reason for convicting the fact that the defendant knew that he might suffer from such a condition.

It will be recalled that Humphreys, J., in *Kay* v. *Butterworth*, said that he was not suggesting that a person should be made liable at criminal law who, through no fault of his own, becomes unconscious while driving, as, for example, a person who has been struck by a stone or overcome by a sudden illness, or when the car has been put temporarily out of his control owing to his being attacked by a swarm of bees or wasps.

In the case reported above doctors called for the defence stressed that there would be no warning of the attack of *petit-mal* and that defendant would be conscious one minute and unconscious the next. It appears that the Bishop Auckland justices were going a little further than previous courts have done in convicting in the circumstances set out above.

R.L.H.

No. 45.

TAR IN THE TYNE

The Northern Gas Board was summoned to appear at Wallsend magistrates' court on April 26 last, to answer charges first that on a day in March it unlawfully permitted to flow into the River Tyne, from the Howdon Gas Works, waste product or other substance produced in making or supplying gas, namely, tar, contrary to para. 32 (1) of sch. 3 by virtue of s. 56 of the Gas Act, 1948, and secondly that on the same day it unlawfully allowed oil to escape from a place on land, namely, the Howdon Gas Works, into the River Tyne, contrary to s. 1 (1) of the Oil in Navigable Waters Act, 1922.

For the prosecution, evidence was given that on March 4 last, the River Tyne police discovered a large quantity of tar substance stretching on the surface of the water of the River Tyne leading up to a shipyard and appearing from a submerged sewer. A sample of the substance was taken.

The police officer proceeded to defendant's gas works at Howdon and inspected the effluent chambers and at the tar separator from another plant took a sample. Both samples were produced to the court.

The court accepted evidence for the prosecution by the police and the public analyst to the effect that the effluent found in the River Tyne contained tar and had emanated from the defendant's gas works, and found the charged proved. The gas board was fined £25 and ordered to pay £6 6*s*. costs.

With regard to the second charge the chairman stated that having found the defendant guilty under the first charge the bench took the view that it would be most improper to convict the board on the second summons on the same facts under the Oil in Navigable Waters Act, 1922, bearing in mind the provisions of s. 33 of the Interpretation Act, 1889, which provide that where an act constitutes an offence under two or more Acts of Parliament an offender shall not be penalized twice for the same offence. The court therefore dismissed the second charge.

COMMENT

It is good to know that more active steps are now being taken to reduce, as far as possible, the intolerable nuisance caused by the presence of unpleasant substances in rivers and coastal waters, and it is to be hoped that whenever charges are brought home offenders will be made to realize that if they pollute the waters they will have to pay heavily if found out.

Section 56 of the Gas Act provides that sch. 3 to the Act, which contains a code of provisions relating to gas supply, shall apply to area boards. Paragraph 32 (1) of sch. 3 enacts that if area boards are responsible for the pollution of inland waters they may be punished on summary conviction with a fine of £50 and to a further fine of £10 for each day during which the act constituting the offence continues after the expiration of 24 hours from the service of notice on the board that it is being committed. On conviction on indictment the penalties are doubled.

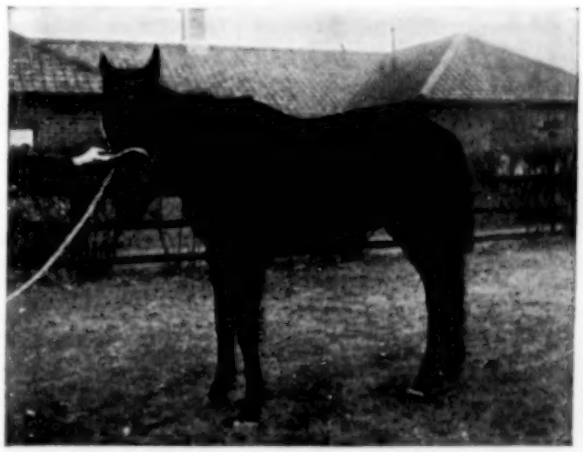
(The writer is greatly indebted to Mr. James Matthews, clerk to the Wallsend justices, for information in regard to this case.)

R.L.H.

NOTICES

The next quarterly meeting of the Lawyers Christian Fellowship will be held at the Law Society's Hall, Bell Yard, W.C.2, on Wednesday, June 15, 1955, at 6 *p.m.* Tea will be available from 5.30 *p.m.* The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Mr. P. D. Warren, M.C., B.A., on the subject of "Our Standard of Living."

The next court of quarter sessions for the borough of Shrewsbury, Salop, will be held on Wednesday, June 15, 1955, at the Shirehall, Shrewsbury, at 11 *a.m.*



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MISCELLANEOUS INFORMATION

COUNTY BOROUGH OF WALSALL—CHIEF CONSTABLE'S REPORT FOR 1954

The strength of the force on December 31, 1954, was 135 men and seven women, and the chief constable comments that the women continue to perform their varying duties in a creditable manner, and that they greatly contribute to the efficient working of the force. Comments such as this must make pleasant reading for those pioneers who, not so very many years ago, fought hard for the recognition of women police as useful and necessary members of a force.

The authorized establishment is 148 men and seven women. During the year, there were 57 applications to join the force and 14 were finally accepted. Under the heading "Discipline" it is recorded that although a number of disciplinary cases have been dealt with during the year, the members of the force generally have been very well conducted and have carried out their duties in a conscientious and commendable manner. We are afraid that it is the need for discipline, which must be maintained, which is one of the factors which discourage recruiting; but we hope that this is a passing phase and that in the future more applicants will come forward to accept the disadvantages of police service as of minor importance compared with the satisfaction which can be obtained from a worth-while job well done.

In a reference to police visits to premises where dangerous drugs are authorized to be kept, stress is placed upon the importance of keeping such drugs in locked receptacles, so that they are not easily accessible to children and others not qualified to handle them. It seems strange that so elementary a precaution should have to be emphasized, but we suppose that to those accustomed to handling such drugs familiarity may breed contempt for necessary safety measures.

Amongst their other duties during 1954, Walsall police took care of and restored to their parents 125 lost children who were found wandering. A duty they could easily have been spared, by normal care and common sense on the part of householders, was that of attending to 272 front doors, 75 side doors, 84 rear doors, three gates and 122 windows left insecure, together with 21 keys found in office doors.

There are 228 licensed premises in Walsall. During the year there were 92 convictions for drunkenness, an increase of 17 over 1953. There were also four convictions of persons for being under the influence of drink whilst in charge of motor vehicles.

Indictable offences were 929, with 557 (59·9 *per cent.*) detected. The figure for 1953 were 995 crimes. For 1938 it was 685. 1952 was a bad year with a total of 1,249. Non-indictable offences led to 1,247 persons being prosecuted in 1954, against 1,012 for 1953. During 1954, 884 persons (including 88 juveniles) were "cautioned as an alternative to prosecution." Two hundred and ninety-two of them were for miscellaneous minor offences and 592 for motoring offences.

Juvenile offenders, for indictable offences, numbered 78, 39 less than in 1953. Thirty-three of the 78 had been before the courts on one or more previous occasions.

Road safety received its due share of attention, with lectures and films for adult and youthful audiences.

The special constables, numbering 94 men and 15 women, continued to give invaluable service whenever called upon, and they availed themselves of the courses of instruction in police duties which were arranged for them.

Out of a total cost of £140,416, the net cost to the borough of police services was £66,610, which represented a rate of 2*s.* 3*d.* in the pound.

PLYMOUTH JUVENILE COURT PANEL REPORT

The report of the juvenile court panel for the city of Plymouth for the year 1954 records a welcome improvement with regard to premises. It is common experience that suitable premises for the holding of juvenile courts are usually hard to find; there may be a good court room but inadequate waiting room and lavatory accommodation, or what would be suitable premises may not be made available by owners or occupiers who fear their property may receive rough usage. In Plymouth, new quarters have been found at a Baptist church schoolrooms. Here there are in addition to the court room a justices' retiring room and separate rooms for the juvenile offender and his or her parents, the witnesses, probation officers and the police.

There was a decrease in the number of adoption orders made, but the decrease is regarded as temporary, there being a considerable number of applications pending. In Plymouth, however, it appears that the jurisdiction of the county court is the more popular.

Many juvenile court magistrates appreciate the receipt of reports on the progress of boys and girls whom they have sent to approved schools. The matter is thus referred to in the Plymouth report: "There were two meetings of the panel in 1954. At the meeting held in May, 68 reports on children committed by the court to approved schools and to the local attendance centre were considered. At the November meeting, 57 similar reports were received and considered. The panel was concerned that no reports had been received from some of the approved schools, but efforts have since been made to obtain co-operation in this matter."

It is considered by the panel that the amount of juvenile delinquency in the city remains high and shows no sign of diminishing to any significant extent. The magistrates are well satisfied with the work of the attendance centre, and they feel that if the lower age were reduced many younger offenders would receive great benefit from the training.

The report complains of the lack of remand home accommodation for girls in Plymouth, the result of which is that girls have to be taken to and from either Bristol or London and sometimes detained for a night at police headquarters. As to the boys, there is a prospect of a new remand home at Newton Abbot, to be established by Plymouth corporation and the Devon county council. At present, the boys go to Ashburton and its amenities have been much appreciated and great value has been attached to the reports received from the superintendent of the home.

ROAD CASUALTIES—FEBRUARY AND MARCH

Over 16,500 people were injured on the roads of Great Britain in March, 352 of them fatally. Serious injuries are provisionally reported to have numbered 3,756 and slight injuries 12,399.

Although the total of 16,507 is 538 more than in March, 1954, the increase was confined to slight injuries. There were 17 fewer deaths and 58 fewer serious injuries.

A marked increase in accidents to motorists and their passengers is shown by the detailed figures for February. The number of those killed and injured in these accidents was 8,175, or 1,374 more than in February, 1954. Casualties among motor cyclists and their passengers increased by 327 and those among occupants of other motor vehicles by 1,052. But casualties among motor-assisted pedal cyclists, numbering 165, fell by five.

The continued rise in road casualty figures, particularly those for drivers and passengers, has coincided with the rapid growth in the number of motor vehicles on the road, which last year increased by nearly half a million. During February, bad weather created additional risks and police reports show that ice or snow was the direct cause of 1,886 accidents—about double the number of accidents attributed to the same causes in February, 1954.

Casualties to all road users in February totalled 14,524. This was 1,654 more than in February, 1954, and included 309 deaths, an increase of 43.

PERSONALIA

APPOINTMENTS

Mr. Justice R. Y. Hedges, Mr. Justice S. P. J. Q. Thomas, Mr. Justice C. R. Stuart, and Mr. Justice W. H. Irwin are to be Judges of the High Court of the Western Region of Nigeria, when it is established. All are at present puisne judges in Nigeria.

Mr. David L. Morgan has been appointed county coroner for the Tonbridge, Kent, district in succession to Mr. J. H. Soady, who has resigned. Mr. Morgan has held the office of deputy coroner for that district since 1953. Kent county coronerships are part-time.

Mr. Dennis Lambert has been appointed children's officer with the county borough of Grimsby, Lincs. Mr. Lambert who was formerly deputy children's officer to Derby county borough will be commencing his duties on June 13, 1955. The former occupant of the position was Miss Ruth Haring who has obtained a similar post with the city of Dundee, Scotland.

Mr. R. Garner, at present second assistant to the clerk to the justices of the Watford division of Hertfordshire, has been appointed senior assistant to the clerk to the Brentford, Middx., petty sessional division justices. Subject to a satisfactory medical assessment, it is expected that Mr. Garner will commence his duties at Brentford on July 5 next. The vacancy in the Brentford division was caused by the resignation of Mr. H. M. Bray, whose appointment as deputy clerk to the justices of Bristol was announced in our issue of March 26, 1955.

Mr. Norman Barton, A.C.C.S., has been appointed managing clerk and mayor's secretary for Redcar, Yorks., borough council. He transfers from Warrington, Lancs., county borough council and succeeds Mr. K. Bentham, M.B.E., A.C.C.S., who has obtained an appointment with the Municipal Board of Mombasa.

THE NEW WOMAN

Writing in 1763, James Boswell recounts how he described to Dr. Johnson his visit to a Quakers' Meeting, where he had heard a woman preaching. "Sir," said Johnson, "a woman's preaching is like a dog walking on his hinder legs. It is not well done, but you are surprised to find it done at all!" That this pronouncement was based on the great man's High Church principles, and not on any disrespect for the intellectual ability of the other sex, is clear from the record of a conversation six years later, when Boswell writes:

> "Although I had promised myself a great deal of instructive conversation with Johnson on the conduct of the married state, of which I had then a near prospect, he did not say much upon that topic. He maintained to me, contrary to the common notion, that a woman would not be the worse wife for being learned; in which, from all that I have observed, I humbly differed from him."

On this subject, as on so many others, the Doctor was in advance of his age. Writers of both sexes have until quite recent times insisted that woman's place is in the home, and that she only makes herself ridiculous by seeking knowledge and engaging in pursuits which have nothing to do with the domestic virtues. Even so astute an observer as W. S. Gilbert poured contempt and ridicule upon the type of girl who aspired to a university education and a career of her own. In the 70 years that have elapsed since the first production of *Princess Ida* most of the male fortifications have gone down before the feminist assault; but there are still a few diehards who cling to the outworn dogma of masculine superiority. And many, who would not admit the fact openly, echo in their thoughts the lines of Walter Scott:

> "O Woman! in our hours of ease,
> Uncertain, coy and hard to please . . .
> When pain and anguish wring the brow,
> A ministering angel thou!"

Female physicians and surgeons are today a commonplace; women architects, surveyors, actuaries and accountants are in practice everywhere. "Sweet girl graduates, with their golden hair," as Tennyson romantically imagined them, receive their degrees at almost all our universities; many qualify as practitioners in both branches of the legal profession. But in some quarters there is still a closed shop. "Equal pay for equal work" is in prospect, but not yet in actuality. The appointment of justice of the peace has long been open to members of both sexes, and there is one lady stipendiary; but none has yet graced the County Court or High Court Bench. Women are freely elected to the House of Commons, and more than one has attained ministerial rank; but none has yet penetrated to the Lords. There are ladies holding British consular and diplomatic appointments, but none has yet become an ambassador. These anomalies will no doubt disappear in time, as the last strongholds of masculine privilege fall to the forces of progress.

In the face of these developments it is surprising that the inaugural debate of the newly-founded Women's Union at Cambridge University concluded with a majority of one—and *that* the President's casting vote—in favour of the motion "That woman's place is in *this* House." More tolerant than "the other place," the Women's Union admitted two ex-presidents therefrom to take part in the debate. One of these guest-speakers was responsible for the main sally of the evening; his reference to "blue-stockings laddering with excitement" harks back directly to *Princess Ida*. Equally witty was the contribution from the Treasurer of Queen's University, Belfast: "Woman need not be able to add, but they must be able to distract."

It is not only on the intellectual plane that women are emulating the other sex; they are increasingly successful in invading provinces that have always been reserved, until now, exclusively for men. In a Lincolnshire youth-club the local vicar (who must be an exponent of what Disraeli called "muscular Christianity") is instructing teen-age girls in the Japanese method of self-defence known as Judo. At the R.A.F. Control Flying School, in Gloucestershire, girl-technicians work on equal terms with their male colleagues in workshop and hangar; several hold technical commissions, and one is in charge of all electricians in the Aircraft Servicing Flight. They are authorized to certify the serviceability of the engine or appliance on which they have worked, and their efficiency is fully equal to that of the men.

If the next stage of this development is the employment of women in combatant duties, it will be following a time-honoured precedent. Homer has recounted, in the Fifth Book of the *Iliad*, how the Olympian Deities flew down to join the battle round the walls of Troy—and not only the Gods Apollo and Ares, but also the Goddesses Hera, Queen of Heaven, Athene of the Flashing Eyes, and Aphrodite, the Patroness of Love and Beauty. The two first-named did great execution among the opposing hosts; while Aphrodite was actually wounded in the fight and (despite her Godhead) might have succumbed to her injuries, had not Iris of the Rainbow succoured her in a flying ambulance and borne her safely back to Olympus for medical attention. Iris seems indeed to have been the first Air-Hostess in history, giving aid and comfort to her sister-Goddess on the flight and piloting her aircraft at the same time, *solo*—thus setting a fine example of competence and gallantry of the highest degree.

Iris would find plenty of scope for her gifts today. A recent announcement bewails the shortage of stewardesses in the Civil Airlines; owing to the "wastage" arising among those ministering angels who leave to get married, and the very special qualifications demanded from applicants, both the B.O.A.C. and the B.E.A. are finding replacements difficult. The standards are exacting: "recruits must be aged between 21 and 28, and must have a smart, neat appearance, a pleasing, well-developed personality and a good standard of education"; knowledge of a foreign language, nursing or catering experience and high physical fitness are essentials. A further requirement is euphemistically described as a "reasonable relationship between height and weight." These Olympian qualities must be supplemented by "an intangible something" which the American Airlines explicitly describe as "poised, practical and diplomatic." Those employed by the Dutch K.L.M. must be familiar with English, French, German and Spanish; they must undergo a psychological test and be experienced in child-care.

Such maidens are paragons indeed; they leave Wagner's Valkyries a long way behind, and excel by far the New Woman that Ibsen and Shaw foretold. Artur Schopenhauer defined a woman as a badly-finished man, and it is not so long since the Nazi propagandists proclaimed that woman was "the tired warrior's relaxation." It is interesting to speculate on the feelings of these Teutonic gentlemen if they found themselves today passengers in an aircraft under the tender mercies of the sex they so greatly despised.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Burials—*Burial ground for one or two parish wards.*

I refer to P.P. at 102 J.P.N. 254. The answer says that the expense of providing a burial ground is chargeable upon the one or two wards as the case may be. It would be appreciated if you could let me have the authority for this proposition. CARNA.

Answer.

The authority is s. 13 of the Burial Act, 1855.

2.—Criminal Law—*Larceny and receiving—Accessories.*

I am having some difficulty in reconciling the judgments in *Wessel* v. *Carter Paterson & Pickfords, Carriers, Ltd.*, (1947) 111 J.P. 474, an unreported case, *William Kercher* v. *Bert Austin Kavanagh*, and a very recent one, *R.* v. *Bullock* [1955] 1 All E.R. 15.

In *Wessel* v. *Carter Paterson & Pickfords, Carriers, Ltd.*, it was held that a person who steals property, could be convicted for receiving the property, if he has procured the commission of the offence by the receiver.

In the case of *William Kercher* v. *Bert Austin Kavanagh*, when dismissing an appeal by way of Case Stated, the Lord Chief Justice commented that Kavanagh would have been properly convicted as an accessory after the fact if he had been so charged, but, he added "He was not. He was charged with stealing."

In the case of *R.* v. *Bullock*, the appellant Bullock was indicted on two counts alleging housebreaking and larceny, but was convicted and sentenced on two counts of being an accessory before the fact to housebreaking; no count alleging that he was an accessory appeared in the indictment. The report states that the foreman of the jury intimated to the commissioner that the jury were not satisfied that Bullock was a principle in the first degree, adding that "although he may not have been the person driving the car, he knew beforehand that it was going to be used for that purpose." The commissioner replied that Bullock would be an accessory before the fact and liable to be punished accordingly, the appeal against conviction thus failing.

It is appreciated that the *Bullock* case deals with an accessory before the fact, whereas the *Kercher* v. *Kavanagh* case was concerned with a person who had been an accessory after the fact, but I would appreciate your views on the question as to whether it is necessary for an additional charge of being an accessory to be preferred before a court can convict of either of these offences.

Section 35 of the Magistrates' Courts Act, 1952, does not appear to assist in this direction, as it is concerned only with the commission of summary offences. SEE-N-EL.

Answer.

In the case of an accessory before the fact it seems unnecessary to prefer both a charge of the substantive offence and a charge of being an accessory, as by ss. 1 and 8 of the Accessories and Abettors Act, 1861, accessories before the fact may be tried as principals. Accessories after the fact are dealt with in s. 3 of the Act, and in such cases it would be well to prefer the additional charge, the wording of that section being in different terms from those of ss. 1 and 8.

3.—Fines and Other Sums of Money—*Enforcement—Means.*

For enforcement of fines, etc., or civil debts, the magistrates may not commit except on evidence that the debtor has or has had means to pay, but in respect of affiliation orders, etc., and rates, they may commit if the default is due to wilful refusal or culpable neglect. It appears to the writer that magistrates should strictly not commit in the first two cases if the debtor has no "means" because though able to earn he has chosen not to do so for no good reason. Is there any authority on this point, and if not what is your opinion ? SARMO.

Answer.

The enforcement of fines and other sums adjudged by a conviction is governed by ss. 69 and 70 of the Magistrates' Courts Act, 1952, and affirmative proof of means is not required. *See R.* v. *Woking JJ., ex parte Johnson* [1942] 2 All E.R. 179; 106 J.P. 232, and *R.* v. *Dunne, ex parte Sinnatt* [1943] 2 All E.R. 222; 107 J.P. 161. Civil debt procedure requires proof of means before there can be committal, *see* s. 73 of the Act.

Arrears under affiliation orders and orders similarly enforceable are dealt with in s. 74, and here the court may not issue a commitment if it is satisfied that failure to pay is not due to the defendant's wilful refusal or culpable neglect. It seems that the onus is on the defendant to satisfy the court on this point. The provisions relating to rates are similar, *see* Money Payments (Justices' Procedure) Act, 1935, s. 10.

In the case of a sum adjudged by a conviction it seems clear that if the court has evidence that the defaulter has wilfully neglected to avail himself of opportunities to earn money in order to avoid payment, he could be committed. In the case of a civil debt, proof of the defaulter's means is necessary but we think that if there is conclusive evidence that the defaulter could have earned the money but deliberately refused to work, he could be held to have had the means to pay, *i.e.*, by working. We cannot quote authority, but we feel that in the absence of authority, justices could properly decide that a defendant who ought to be working but deliberately refuses to work in order to defeat the judgment of the court should be treated as a person with means to pay who wilfully refuses.

4.—Husband and Wife—*Maintenance order—Payments by husband in advance—Duty of collecting officer as to paying over to wife.*

It is not uncommon for a husband to pay to the collecting officer monies in advance of the time when they are due under an order, for example, he pays on the first of the month the amount due during the month. Am I therefore in order in paying over to the wife this sum as soon as received or must I merely pay out each week as and when the money actually becomes due. I have in mind the difficulties which might arise if the man were to die during the month.

SUNEA.

Answer.

In our opinion the collecting officer should not, save on the express request of the husband, pay over any sum until it has become due. Complications could arise, for example, on the death of either party.

5.—Husband and Wife—*Maintenance order—Wife in mental hospital—Variation of order.*

Mrs. A obtained a maintenance order against her husband for 30*s.* a week in 1949. Subsequently Mrs. A was admitted as a voluntary patient to a mental hospital but was not and has not been certified a mental patient.

During 1954 Mr. A made an application to the magistrates for a variation of the order. Mrs. A, who was in hospital, did not appear nor was she represented. It is understood that the submission put forward on behalf of Mr. A was similar to those referred to at 113 J.P.N. 351 and 368, and at 115 J.P.N. 348.

We do not know whether the magistrates knew at that time whether Mrs. A was certified or not. The order was varied to a nominal one of 1*s.* per week and the arrears amounting to £98 5*s.* then outstanding were remitted.

Could you advise:

1. Whether the argument put forward in your newspaper would apply to a voluntary patient as opposed to a certified patient in a hospital (National Health Mental Hospital) because in this case the wife requires a small amount such as 5*s.* per week for her personal comforts which are not automatically supplied.

2. If the answer to (1) is no, what action can the wife take to increase the order or set aside the variation. It is presumed that there is no fresh evidence other than any stated above.

SOCKAT.

Answer.

1. If the wife is being maintained at the public expense she appears to need no maintenance from her husband (apart from the additional comforts referred to), whether she is a voluntary or a certified patient. It may be quite reasonable to require him to pay a small sum for additional comforts which the hospital authorities think desirable but cannot provide.

2. There is no requirement in s. 53 of the Magistrates' Courts Act, 1952, that there should be fresh evidence, but it is usual to require proof of a change of circumstances or of facts not previously known to the court, as otherwise one magistrates' court might be practically acting as a court of appeal against the decision of another such court. The case of *Re Wakeman, Wakeman* v. *Wakeman* [1947] 2 All E.R. 74; 111 J.P. 373, may be referred to.

6.—Justices—*Chairman of the bench—Retirement due under age limit—Election of successor.*

My chairman has informed me that his name will be transferred to the supplemental list at the end of May, 1955. I shall be glad of your valued opinion as to whether on a strict interpretation of sub-para. (13), the meeting of justices to elect another chairman cannot

be called until after the end of May. It may be argued that such a meeting may properly be called in anticipation of the chairman's retirement, say, in the month of April, on the analogy of the meeting called in anticipation under sub-para. (2). S.C.J.B.

Answer.

On a strict reading of the words of the rule the election should not take place until the vacancy arises. There would appear to be no real harm in an earlier election, but we think it better to comply strictly with the rules, and avoid possible questions.

7.—Larceny—*Compensation—Disposal of proceeds of offence.*

I shall be glad of your views in connexion with the following: A juvenile, on being found guilty of larceny of money, has been ordered to make restitution of the amount stolen. There were found in his possession certain articles which he had admittedly bought with the stolen money. These articles were of no use whatever to the prosecutor nor was the court in any position to place any value upon them. The juvenile having been ordered to make monetary restitution in respect of the total sum involved, are the articles so purchased by the juvenile his property, or may the court order forfeiture thereof? SURNES.

Answer.

The court might have ordered restitution by means of the property purchased, but for good reasons decided not to do so but to order monetary compensation. This being so, there seems no reason to justify any order as to the goods purchased. The boy paid for them, the vendor is not out of pocket, and the boy will make good to the prosecutor, so he will gain nothing out of the transaction and should, we think, retain the goods, there being apparently no claimant to them.

8.—Licensing—*Provisional grant—Application in respect of existing unlicensed premises which will require substantial alteration.*

We have been instructed to act for an applicant for a justices' full licence in respect of premises which have to date been used as a private dwelling-house and is now intended to be used as a public house. We have observed the case mentioned in the note to s. 10 of the Licensing Act, 1953, set out in *Paterson* and have looked at the report but we cannot decide whether or not we may make an application for a provisional licence in respect of this house, because it is already built and constructed and that suitable alterations are necessary, or whether the application should be for an immediate licence. It is not anticipated that the premises could be converted for suitable use for some months after a licence is granted. Under the circumstances we should be obliged if you could tell us whether in your opinion an application should be made under s. 10 or not. Could the application be made in the alternative? OCKAT.

Answer.

The provisional grant procedure of s. 10 of the Licensing Act, 1953, is appropriate in the case of an application in respect of "premises about to be constructed or in course of construction for the purposes of being used as a house for the sale of intoxicating liquor for consumption on the premises." The private dwelling-house mentioned by our correspondent answers this description, and therefore it would be proper to apply for a provisional grant of a new licence.

The recent case of *R.* v. *Axbridge JJ., ex parte Ashdown* (1954) Br. Tr. Rev., p. 408, noted in *Paterson*, 63rd edn., at p. 757, in which it was held that a provisional grant was inappropriate, referred to existing licensed premises which it was intended to alter, and, without changing the identity of the premises, to enlarge from a beerhouse to "full" on-licensed premises. In such a case, the appropriate procedure to give effect to the scheme for structural alterations would be an application under s. 134 of the Licensing Act, 1953.

9.—Magistrates—*Practice and procedure—No information—Defendant brought before court on a charge—Who is to prosecute?*

The only persons who are entitled to conduct cases in a magistrates' court are (*a*) counsel, (*b*) solicitors, (*c*) parties to the proceedings, (*d*) persons specifically authorized so to do by statute, *e.g.*, inspectors under the National Assistance Act, 1948. It not infrequently happens that a person who is arrested for, say, being drunk and disorderly, or being in charge of or driving a motor vehicle when under the influence of drink is taken to the police station and after being detained for a time (to "sober up") is charged with the particular offence and released on bail to appear at a specified court to answer the charge. In such cases it often happens that when the case comes before the court for hearing a police officer other than the one who has signed the charge sheet or granted bail seeks to conduct the prosecution and to address the court and in the event of the defendant's pleading not guilty to cross-examine him and his witnesses. Although no formal information has been laid in these cases it is appreciated that the charge sheet is by long custom accepted as a sufficient information; even so is a police officer who has neither signed the charge sheet nor granted bail entitled to conduct the prosecution? And can such police officer be regarded as "the prosecutor" within the meaning of s. 16 of the Magistrates' Courts Act, 1952? JEWEN.

Answer.

We think that there is no authority on this point, and that the question cannot be answered with certainty.

We begin by referring to the views expressed in the "Roche" Report (1944) at pp. 18 and 19, about the undesirability of police officers who are not strictly informants taking the place of professional advocates. Accepting this, we think that where a case comes before the court as a charge the person who is most nearly in the position of the informant for a summons or warrant is either the officer arresting (if he signs the charge sheet) or the person, other than the officer, who signs the charge sheet.

We do not like the practice of an officer who has had no connexion with the arrest and who has not signed the charge sheet coming forward as prosecutor, but we cannot say that it is impossible for him to seek to justify his position: and so far as s. 16, *supra*, is concerned, if there is someone to present the case and the evidence to the court we think that the court should hesitate before treating the prosecutor as being absent.

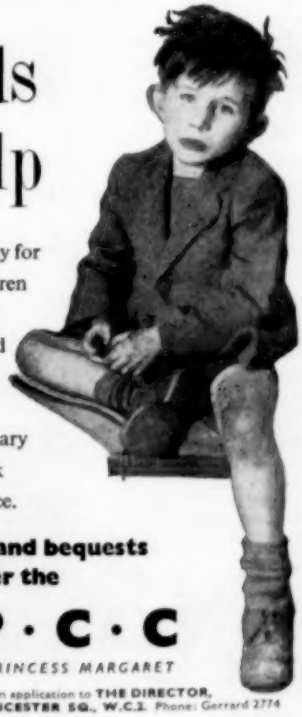
10.—Real Property—*Purchases by local authorities—Conveyance—Stamp duty.*

Section 12 of the Finance Act, 1895, requires that within three months of completion of a purchase authorized by statute a conveyance duly stamped shall be produced to the Commissioners of Inland Revenue. In the case of small road improvements it is a frequent practice for highway authorities to rest on an agreement to purchase, no formal conveyance being taken. It is appreciated that an agreement to dedicate land for a highway will usually meet the object in view, but, this apart, your opinion is invited as to whether the effect of the section is that local authorities purchasing land under statutory powers must always proceed to a formal conveyance.

P. SILVANUS.

Answer.

The latter part of the section safeguards the public revenue where property is vested without a conveyance, upon a purchase to which the section applies. So long, therefore, as the Inland Revenue are informed and the appropriate duty is paid, it cannot be said that an informal transfer of land is necessarily objectionable on public grounds, though from the local authority's own point of view we regard a formal conveyance as being desirable in most cases: *see* 114 J.P.N. 56. For a difference of opinion about the ambit of the section, *see* 116 J.P.N. 238, 362.



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A. W. R. WEBB,
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Netteswell Hall,
Harlow.

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APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of a full-time Female Probation Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules, and the salary will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than June 30, 1955. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Secretary of the Probation Committee.

The Castle,
Winchester.
June 6, 1955.

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Appointment of Principal Assistant

APPLICATIONS are invited for the post of Principal Assistant in the office of the Clerk to the Justices at Romford. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office and be able to act as Clerk of the Court when necessary. The commencing salary will be between £825 and £1,000 a year.

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W. J. PIPER,
Clerk of the Magistrates' Courts Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
May 31, 1955.

ESSEX MAGISTRATES' COURTS COMMITTEE

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Applications, stating age, qualifications and experience, should be sent with copies of two recent testimonials to the undersigned not later than June 27, 1955.

NICHOLAS TUITE,
Secretary to the Probation Committee.

G.P.O. Box 32,
Royal London House,
King Street, Wigan.

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